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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,991	08/01/2003	Herbert L. Berman	VVMDNZ00201	8976

40518 7590 11/16/2007
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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3768

MAIL DATE	DELIVERY MODE
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11/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/632,991	Applicant(s) BERMAN ET AL.	
	Examiner Eric F. Winakur	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-31 and 33-50 is/are pending in the application.
- 4a) Of the above claim(s) 37-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-31, 33-36 and 45-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 October 2007 has been entered.

Claim Rejections - 35 USC § 103

3. The rejection of claims 29, 30, 33 - 36, and 45 - 50 under 35 U.S.C. 103(a) as being unpatentable over Heinonen '020 in view of Heinonen '586 and Rosenthal is hereby maintained for the reasons of record.

4. The rejection of claim 31 under 35 U.S.C. 103(a) as being unpatentable over Heinonen '020, Heinonen '586, and Rosenthal, as applied to claim 29 above, further in view of Mault is hereby maintained for the reasons of record.

Response to Arguments

5. Applicant's arguments filed 24 October 2007 have been fully considered but they are not persuasive. Applicant describes an embodiment of both Heinonen references that relies upon transmittal and remote processing, and contends that none of the references teach calculating glucose levels locally and within the device. However,

contrary to Applicant's assertion, Heinonen '020 teach such an embodiment. See Heinonen '020, Figures 2 and 3 and the description of column 5, lines 41 - 60. Further, Applicant argues that Rosenthal does not disclose calculating 'the blood glucose level present on "a skin surface of the patient which is placed against the glucose monitoring device" as claimed' and contends that the claim language distinguishes over the transmission arrangement of Rosenthal. Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. It is noted that while Applicant's disclosed invention may relate to calculating blood glucose level "present on" the skin, the claims merely require an element obtaining "blood glucose levels calculated from measurements obtained from a skin surface of the patient which is placed against the glucose monitoring device". Such a limitation encompasses both Applicant's disclosed embodiment and a transmission arrangement, as disclosed by Rosenthal. Note for example, Rosenthal, Figure 2, and column 5, lines 9 - 11 that describes detecting near infrared energy "emerging from the test subject's body part". As the detector arrangement is in contact with the skin of the test subject, the measurement is clearly "obtained from a skin surface of the patient which is placed against" the measuring device as required by the claim. Thus, contrary to Applicant's assertions, the combination teaches or suggests all of the claimed features and the rejection is hereby maintained.

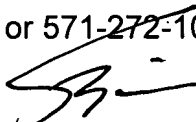
6. With regard to the rejection of claim 31, it is noted that Applicant presents no additional arguments than those discussed above. As such, the rejection of claim 31 is also deemed proper and is also maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571/272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Eric F Winakur
Primary Examiner
Art Unit 3768